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his timber, and receives the full purchase price, on condition that the timber be severed and removed within a limited time, all such timber, though paid for, remaining on the property at the end of the time limit, reverts to the landowner.

[Ed. Note.—For other cases, see 16 Va.-W. Va. Enc. Dig. 1214.]

8. Logs and Logging (§ 3 (13)*)—Contract for Sale of Growing Timber—Deduction for Lumber Used in Buildings.—Where a contract for the sale of growing timber gave the lumbermen the right to erect all buildings necessary in the manufacture and removal of the timber, the buildings to revert to the landowners when the operation was finished, and the lumbermen put very inferior lumber into such buildings, only the actual value of such lumber in the logs, and not the average price paid the landowners for all the logs, could be deducted by the lumbermen for the lumber that went into the buildings.

[Ed. Note.—For other cases, see 16 Va.-W. Va. Enc. Dig. 1212.]

9. Logs and Logging (§ 3 (7)*)—Contract for Sale of Growing Timber—"Buildings."—Docks or platforms running out on a level with the mill floor, on which lumber was taken on cars and stacked for drying, constructed for the convenience of the lumbermen, and of no appreciable value to the landowners, were not "buildings," within the meaning of a contract for the sale of growing timber, providing that the lumbermen had the right to erect all buildings necessary in the manufacture and removal of the timber, such buildings to revert to the landowners on completion of the operation, so that the landowners were entitled to be paid for the lumber used in their construction.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Building. For other cases, see 16 Va.-W. Va. Enc. Dig. 1212.]

Error to Circuit Court, Lee County.

Suit by B. F. Kincaid and Martha E. Kincaid against M. C. McCorkle & Son. To review a judgment for plaintiffs, defendants bring error. Reversed, and case remanded for new trial.

R. T. Irvine, of Big Stone Gap, and *C. R. McCorkle*, of Wise, for plaintiffs in error.

Bullitt & Chalkley, of Big Stone Gap, and *Pennington & Pennington*, of Pennington Gap, for defendants in error.

SUTHERLAND et al. v. GENT.

Sept. 20, 1917.

[93 S. E. 646.]

1. Appeal and Error (§ 1005 (3)*)—Review—Findings—Questions for Jury.—In ejectment whether plaintiff showed that the land de-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

scribed in the declaration is included in the block claimed, and whether defendants showed adverse possession under color of title to the land claimed by them within the interlock since the senior title of plaintiff accrued, were questions for the jury, and, having been fairly submitted to the jury, the findings on conflicting evidence approved by the trial court will not be reviewed.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 620.]

2. Trial (§ 232 (1)*)—Instructions—Sufficiency as Whole.—Where the instructions as a whole fully and correctly propounded the law upon every material question in the case, more cannot be required of a trial court.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 714.]

Error to Circuit Court, Russell County.

Action by J. W. Gent against W. H. Sutherland and others. Judgment for plaintiff after remand for a new trial, and defendants bring error. Affirmed.

W. W. Bird and T. L. Sutherland, both of Lebanon, and *S. H. & G. C. Sutherland*, of Clintwood, for plaintiff in error.

Finney & Wilson, of Lebanon, for defendant in error.

PINE et al. v. COMMONWEALTH.

Sept. 20, 1917.

[93 S. E. 652.]

1. Indictment and Information (§ 144*)—Constitutionality of Statute.—Exceptions.—Since every indictment is based on the existence of a valid law, stating the penalty for the offense, the court must, at any time when the alleged unconstitutionality of the act is brought to its attention, dismiss the prosecution if the act is in fact unconstitutional.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 453.]

2. Constitutional Law (§ 12*)—Construction—Maxims.—The principle, "Expressio unius est exclusio alterius," even in the interpretation of provisions of Constitution, relating to the legislative department, should be applied with great caution.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 149.]

3. Constitutional Law (§§ 26, 48*)—Construction—Presumptions.—In determining whether a legislative act is unconstitutional, it must be remembered that the Constitution is a restriction, and not a grant, of power, and that the Legislature is omnipotent in legislation unless restrained by the Constitution, and that every act is presumed to be

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